

530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODYName GROCE, PIERCE, L.
(Last) (First) (Initial)

FEB 17 2008

Prisoner Number P05958

RICHARD W. MIEHLING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Institutional Address C. S. A. T. F. / G2d-2941owP.O. Box 5248, CORCORAN CALIFORNIA 93212UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAPIERCE Landrum GROCE

(Enter the full name of plaintiff in this action.)

CV

08

0966

SBA

(PR)

Case No. _____
(To be provided by the clerk of court)**PETITION FOR A WRIT SBA
OF HABEAS CORPUS**

E-filing

Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

008-Abelsoft

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Alameda County Superior Court OAKLAND, CALIFORNIA

Court

Location

(b) Case number, if known 152119 + CASE NO. 132066

(c) Date and terms of sentence 6-28-08 (4 yrs 8 months) 7-14-1998 (3 yrs)

(d) Are you now in custody serving this term? (Custody means being in jail, on

parole or probation, etc.)

Yes ✓

No. _____

Where? CALIFORNIA STATE PRISON

Name of Institution: CORCORAN STATE PRISON, C.S.A.T.F.

Address: P.O. Box 5248, CORCORAN CALIFORNIA 93212

2. For what crime were you given this sentence? (If your petition challenges a sentence for

more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

2nd DEGREE BURGLARY 459 PC AND EVADING OFFICER with
wilful disregard, 2800.2 (A) VC AND BOGUS PAROLE
Violation.

1 3. Did you have any of the following?

2 Arraignment: Yes No _____

3 Preliminary Hearing: Yes No _____

4 Motion to Suppress: Yes No _____

5 4. How did you plead?

6 Guilty Not Guilty Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone Judge alone on a transcript _____

10 6. Did you testify at your trial?

Yes _____ No

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes _____ No

13 (b) Preliminary hearing Yes _____ No

14 (c) Time of plea Yes _____ No

15 (d) Trial Yes _____ No

16 (e) Sentencing Yes _____ No

17 (f) Appeal Yes No _____

18 (g) Other post-conviction proceeding Yes _____ No

19 8. Did you appeal your conviction?

Yes No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No _____

22 Year: 2006 Result: Affirmed Conviction

23 Supreme Court of California Yes _____ No

24 Year: _____ Result: _____

25 Any other court Yes _____ No

26 Year: _____ Result: _____

27 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes _____ No ✓

2 (c) Was there an opinion? Yes _____ No ✓

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No ✓

5 If you did, give the name of the court and the result:

6 _____
7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes ✓ No _____

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Alameda County Superior Court, OAKLAND, CA.

19 Type of Proceeding: Writ of HABEAS CORPUS

20 Grounds raised (Be brief but specific):

21 a. FALSE IMPRISONMENT

22 b. VIOLATION OF DUE PROCESS, (AGREEMENT ON DETAINERS)

23 c. REFUSED OR FAILURE TO EXTRADITE

24 d. ILLEGAL EXTENTION OF PAROLE

25 Result: DENIED Date of Result: 1-5-05

26 II. Name of Court: First District Court of APPEAL

27 Type of Proceeding: Writ of HABEAS CORPUS

28 Grounds raised (Be brief but specific):

- a. FALSE IMPRISONMENT
- b. Violation of Due Process (Agreement on Detainers)
- c. Refused or failure to Extradite
- d. Illegal Extension of Parole

Result: DENIED Date of Result: 10-23-07

III. Name of Court: SUPREME Court of CALIFORNIA

Type of Proceeding: Writ of HABEAS CORPUS

Grounds raised (Be brief but specific):

- a. FALSE IMPRISONMENT
- b. Violation of Due Process (Agreement on Detainers)
- c. Refused or failure to Extradite
- d. Illegal Extension of Parole

Result: DENIED Date of Result: 1-16-08

IV. Name of Court: United States District Court, Northern California

Type of Proceeding: Writ of HABEAS CORPUS

Grounds raised (Be brief but specific):

- a. FALSE IMPRISONMENT
- b. Violation of Due Process (Agreement on Detainers)
- c. Refused or failure to Extradite
- d. Illegal Extension of Parole

Result: Dismissed without Prejudice Date of Result: 7-23-2007

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No ✓

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
 3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
 4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: FALSE IMPRISONMENT; I WAS ARRESTED, DETAINED AND
 6 IMPRISONED ON A Bogus Parole Violation, BECAUSE I WAS NO longer ON PAROLE
 7 Supporting Facts: ON 8-3-1998 I was SENTENCED to 3 yrs. this SENTENCE to
 8 Expire 2000. But due to Violations my discharge was EXTENDED to 2-28-04
 9 ON 2-15-06, I was ARRESTED for Parole Violation on this CASE No. i32066 AND ON
 10 4-19-06 I RECEIVED lye in PRISON, to EXPIRE 4-19-07 on this CASE for Violation

11 Claim Two: Violation of my federal-Rights, Under the United States Constitution
 12 CONCERNING AGREEMENT on Detainers, due PROCESS RIGHTS on Extradition

13 Supporting Facts: PETITIONER WAS ARRESTED AND DETAINED in KNOXVILLE, TENNESSEE
 14 by fugitive WARRANT, Placed by CALIFORNIA, ON 7-2-2004, I was LATER
 15 RELEASED ON 8-12-2004, By TENNESSEE Officials. They stated that I
 16 WAS NO longer wanted by California Officials. California Refused to Extradite

17 Claim Three: Illegal EXTENTION of PAROLE on CASE NO. i32066
 18 (Violation of PLEA AGREEMENT)

19 Supporting Facts: ON 8-3-1998 PETITIONER WAS SENTENCED to 3 yrs (NO INHANCEMENTS)
 20 I was to SERVE lyr. ON PAROLE, I was PLACED ON PAROLE 10-5-1999 to END
 21 10-5-2000; but due to A Violation my discharge should HAVE BEEN in 2001, ON
 22 About, 1-3-01 California Parole COMMISSIONER, Illegally EXTENDED my PAROLE from 3 yrs to 4 yrs.

23 If any of these grounds was not previously presented to any other court, state briefly which
 24 grounds were not presented and why:

25 IN CASE NO. 152119, Mr. Floyed BENDER, WAS my EXONERATING WITNESS, HE SWORE
 26 before the Alameda Superior Court, in OAKLAND CA. That he was the PERSON in
 27 question on this CASE No. 152119. My Att. Alfon's WAGNER BAR. No. 63105 on APPEAL No.
 28 A114480, REFUSED to EXPOSE this fact. HE WAS INEFFECTIVE AS COUNSEL

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 (People vs. Arbuckle 22 Cal 3rd 749) Petitioner was denied part of his
5 plea bargain aspect. Entry of the plea was conditioned upon imposition of
6 Sentence. Failure to meet condition constitute a breach of plea bargain

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:

9 I would like a lawyer appointed to represent me on this case

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12

13

Executed on 2-7-2008

Pierce L. Groce

14

Date

Signature of Petitioner

15

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(Rev. 6/02)

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Oct 5 99, I was release from jail that when my parole started now I was sentence to 3yr parole. That put me to 2003 now I only have 2 P.A.L 3.14.00 and that was only for 3 months and 11 days. Then my second P.A.L was for 10 month and 8 days so my running time comes up to 1 yr 1 month and 19 days. Now if this is the case. My Parole should have been up some time in 2004. even with me being a parolee at large this time out. my Parole should have still been over with. why Im I still on Parole.

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE
APPEAL FORM**
 CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. SRJ

2. _____

1. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	PIERCE GROCE	NUMBER	PO5958	ASSIGNMENT	UNASSIGNED	UNIT/ROOM NUMBER	22 A 21
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A. Describe Problem: I was put on Hold on Oct 5, 1999 for a Period of 3 years. I was extend 1 year and I did my Planning Form. My Comtied Discharge Date is 2-28-04. my Discharge Review Date is 2-28-04 at That Point I was Discharge from Folsom. I have the paperwork to prove this to be true

If you need more space, attach one additional sheet.

B. Action Requested: I would Request my Hold Be lifted, a Discharge card Presented to me at my Release.

Inmate/Parolee Signature:

Pierce Groce

Date Submitted: 4-19-06

C. INFORMAL LEVEL (Date Received): 5-10-06

Staff Response: According to the Offender Based Information System (OBIS), Subject has a tentative discharge date of April 7, 2007. This is based on calculations by the Case Records unit. If anyone has any paperwork that indicates otherwise, please submit it to our agent: Austin Uwakwe, PAII

Staff Signature:

Date Returned to Inmate: 5-15-06

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature:

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

Date Submitted:

CDC Appeal Number:

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**CALIFORNIA
JAIL SHEET/REVOCATION TRACKING/SCHEDULING REQUEST
LG70 (4/91)**

REPORT TO: **BOARD OF PRISON TERMS**
 NARCOTIC ADDICT EVALUATION AUTHORITY

DISTRIBUTION DEPARTMENT OF CORRECTIONS

ORIGINAL - BOARD REPORT

1ST COPY - R.H.C.

IND COPY - H.A.

3RD COPY - PAROLEE
SERIAL N. 1

4TH COPY - U.S.

NARCOTIC ADDICT EVALUATION AUTHORITY				REGION/UNIT	CITCU - ST	
CDC NUMBER P 05958	NAME (LAST, FIRST, MI) PIERCE, GROCE	NAME BOOKED AS SAME	II BERKELEY I	YES <input type="checkbox"/>	N <input type="checkbox"/>	
ARREST DATE 11/11/04	ARRESTING AGENCY ANTIOCH PD	BPT REFERRALS: <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NON-MANDATORY	BOOKING NUMBER AND/OR LOCATION 2004025457 / MARTINEZ DET FA			
ARREST CODE * D	* ARREST CODES: A P&CSD STAFF ALONE AB P&CSD ASSISTED BY LAW ENFORCEMENT AGENCY	B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM P&CSD				
HOLD DATE 11/11/04	DISCOVERY DATE 11/12/04	HOLD REMOVED DATE N/A	AGENT OF RECORD E. DOUGLAS	CONTROLLING DATE 2/28/04	DISCHARGE REVIEW DATE 2/28/04	IMMINENT DISCHARGE <input type="checkbox"/>
CHARGES AND CODES 1. COND 2: ABSCONDING PAROLE SUPERVISION		021	CHARGES AND CODES 4. COND 4: BURGLARY 2ND	515		
2. COND 2: TRAVEL MORE THAN 50 MILES W/O P&CSD APPROVAL		028	5. COND 4: FALSE I.D. TO PEACE OFFICER	950		
3. COND 2: FAILURE TO REPORT		020	6.			
REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO: <input checked="" type="checkbox"/> ABSCOND <input checked="" type="checkbox"/> SELF <input checked="" type="checkbox"/> PROPERTY-OTHERS <input checked="" type="checkbox"/> SAFETY-OTHERS				DATE COPY SENT TO PAROLEE	INITIALS OF PERSON SENDING	
SUPPORTING EVIDENCE:						

SUPPORTING EVIDENCE:

CHARGES 1-3: AOR ATTEMPTED HOME VISIT AT SUBJECT'S RECORD OF RESIDENCE AND LEFT CARDS TO CONTACT AOR ON 3/4/02 AND 3/19/02. AS SUBJECT FAILED TO REPORT AND A PAL REPORT WAS SUBMITTED. SUBJECT'S PAROLE WAS SUSPENDED BY THE BPT ON 4/15/02, WITH AN EFFECTIVE DATE OF 3/4/02.

SUBJECT'S WHEREABOUTS WERE UNKNOWN UNTIL 7/19/04, WHEN AOR VERIFIED SUBJECT WAS IN CUSTODY IN TENNESSEE, AT THE KNOXVILLE DETENTION CENTER AS OF 7/2/04. AOR REQUESTED AN UPGRADED WARRANT TO CODE 2 AS SUBJECT MAY BE RELEASED FROM CUSTODY ON 7/21/04.

ON 8/12/04, SUBJECT WAS RELEASED FROM KNOXVILLE, TENNESSEE DETENTION CENTER OVER A P&CSD CODE II WARRANT. AOR REQUESTED SUBJECT'S PAROLE BE SUSPENDED AS HE WAS ALSO PREVIOUSLY AT LARGE, AND AGAIN FAILED TO REPORT/CONTACT P&CSD. SUBJECT'S PAROLE WAS SUSPENDED BY THE BPT WITH AN EFFECTIVE DATE OF 10/1/04. SUBJECT'S WHEREABOUTS WERE UNKNOWN UNTIL HIS ARREST ON 11/11/04, BY ANTIOCH PD.

CHARGES ON 11/17/04

LEGAL STATUS SUMMARY TY D PVP

CDC NUMBER P0525B	NAME GROCE, PIERCE, LANDRUM	ETHNIC BLA	BIRTHDATE 02/06/1951
TERM STARTS 08/03/1998	MAX REL DATE 10/12/2000	MAX ADJ REL DT 10/12/2000	CURRENT REL 05/10/2000
BASE TERM 3/00 + ENHCMNTS	NO ENHCMNTS 0/00 = TOT TERM	3/00	PAROLE PERIOD 3 YRS
PRE-PRISON + POST SENTENCE CREDITS CASE P2900-5 P1203-3 P2900-1 CRC-CRED MH-CRED P4019 P2931 POST-SENT			

IF I HAVE NO ENHANCEMENT how do I
get 3 yrs PAROLE ?

132066 178 89 19

RECV DT/ COUNTY CNT	CASE OFF-CODE	SENTENCE DATE DESCRIPTION	CREDIT CODE	OFFENSE DAT
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CONTROLLING PRINCIPAL & CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

--CONTROLLING CASE --

8/03/1998 ALA 132066
01 P459 2ND BURGLARY 2ND
PR

7/14/1998

1 01/12/1

INTIP WAIVER DATE 08/03/1998	BEGINNING BALANCE 55	CREDIT APPLIED 155	TOTAL LOST 0	TOTAL RESTORED 0	ME TOT 1
------------------------------------	----------------------------	--------------------------	--------------------	------------------------	----------------

CREDITS AUTO RE-VESTED PER PC-2934 : 9

TRAN TYPE	DATE	END DATE	LOG NUMBER	RULE NUMBER	VIOL CAT	DAYS
WCG	11/21/1998	02/28/1999				100

TRAN TYPE	DATE	END DATE	LOG NUMBER	RULE NUMBER	DAYS
					ASSESS LOST REST DEAD

BEG 08/03/1998	*****BEG BAL*****	CURRENT PC BALANCE: 0	CURRENT BC BALANCE: 0
----------------	-------------------	-----------------------	-----------------------

ETO BALANCE = 40 AS OF 02/28/1999

EPRD/MEPD IS 10/05/1999 BASED ON CREDIT APPLIED THRU 02/28/1999 AND WORK GROUP

CASE NO. 132066

P.S. A Copy of My Motion
IS ATTACHED To This
Writ of HABEAS Corpus

12-30-2004

Att: Clerk of ALAMEDA SUPERIOR COURT

This Letter is TO INFORM you That I filed

A MOTION TO DISCHARGE AND TERMINATE

it was FILED ON About August 12, 2004 AND

I'VE NEVER got A REPLY. I'd LIKE for you to
RESPOND AND LET ME KNOW what my RESULTS WAS.

I'VE BEEN informed THAT ANY MOTION NOT RULED UPON

WITHIN THE 45 day PERIOD IS TO BE GRANTED IF THAT

IS TRUE PLEASE SEND MY RELEASE ORDER TO SAN

QUENTIN PRISON AND HAVE ME RELEASED. BECAUSE I

CERTIFIED AND RETURNED RECEIPTED THIS MOTION WHEN I

MAILED IT SO I KNOW IT WAS DELIVERED AND I HAVE
COPIES OF EVERYTHING. THIS MOTION WAS MAILED

FROM KNOXVILLE TENN. ON About Aug.12, 2004. SO

CHECK AND GIVE ME MY RESPONSE A.S.A.P., THANKYOU

Peace Grace POE

RECEIVED
JAN 9 2005
AMALIA

ALFONS G. WAGNER

Attorney At Law

California State Bar No. 63105

1185 Solano Avenue, #131

Albany, CA 94706-1637

Telephone: 510.524.5708

Email: alwagner@pacbell.net

September 1, 2006

Heroe Prince
P-05958
Sierra Unit
P.O. Box 2400
Susanville, CA 96127-2400

Re: People v. Heroe Prince, First District Court of Appeal, Division Two, No.A114480;
Alameda County Superior Court No. 152119

Dear Mr. Prince:

Enclosed is a letter and some material that I sent to you at San Quentin but was returned to me because you had been moved to Susanville. San Quentin was the only address I had for you at the time.

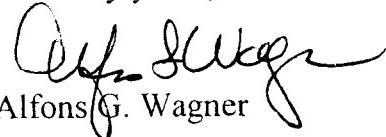
I have not yet received the record on appeal so I am still unable to evaluate your appeal and/or any habeas corpus, much less write a brief or file a petition. I checked the court web site just before writing this letter and there is no indication that the record has been filed. I must tell you the appellate process works at its own speed and unfortunately there is usually very little one can do to speed it up.

All the material I have received shows the courts are calling you Heroe Prince so I am going to stay with that to try to prevent any confusion. Confusion usually means delay.

I received a telephone call from Floyd Bender and we talked for a while. However, without the record on appeal, there wasn't much I could do.

I will keep you advised of developments.

Sincerely yours,


Alfons G. Wagner

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re PIERCE GROCE, AKA HEROE
PRINCE,
on Habeas Corpus.

A119586

FILED
Court of Appeal First Appellate District
DEC -4 2007
Diana Herbert, Clerk
By _____ Deputy Clerk

(Alameda County
Super. Ct. No. 132066, 152119)

BY THE COURT:

The petition for writ of habeas corpus is denied.

Dated: DEC - 4 2007

KLINÉ, P. J. P.J.

S159413

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re PIERCE GROCE on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

JAN 16 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

E- FILED

JUL 23 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 PIERCE LANDRUM GROCE,

No. C 06-3417 SBA (PR)

4 Petitioner,

**ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS**

5 v.

(Docket nos. 8, 9)

6 KATHLEEN PROSPER,

13

7 Respondent.

9 **INTRODUCTION**

10 Petitioner Pierce Landrum Groce, a state prisoner incarcerated at the California Correctional
11 Center, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

12 On October 16, 2006, the Court issued an Order to Show Cause directing Respondent to
13 answer the instant petition.

14 On December 13, 2006, Respondent moved to dismiss the petition for failure to exhaust
15 Petitioner's available state judicial remedies (docket no. 8). Petitioner did not file an opposition.¹

16 For the reasons discussed below, the Court hereby GRANTS Respondent's Motion to
17 Dismiss.

18 **BACKGROUND**

19 According to the allegations in the petition, Petitioner pled no contest to second degree
20 burglary. On July 14, 1998, the Alameda County Superior Court sentenced him to three years in
21 prison. On October 5, 1999, Groce was released on parole for a period of three years. In January,
22 2001, the California Department of Corrections extended his parole period from three years to four
23 years.

24 In 2004, Petitioner filed a petition for a writ of habeas corpus with the Alameda County
25 Superior Court challenging the execution of his sentence. He alleged that he was being kept in

27 ¹ Petitioner's opposition was due on January 30, 2007. (Oct. 16, 2006 Order to Show Cause at
28 2.) On March 2, 2007, Petitioner filed a document entitled "Motion for Review of Decision and Court-
Order Release on March 2, 2007 (docket no. 9). Nowhere in this document does Petitioner address
Respondent's Motion to Dismiss. To date, Petitioner has not filed his opposition.

JUL 23 2007

Entered on Civil Docket

1 custody unlawfully because he had already completed his sentence and available parole violation
 2 terms. The court denied the petition on January 5, 2005.

3 On May 25, 2006, Petitioner filed the instant petition for a writ of habeas corpus under 28
 4 U.S.C. § 2254. He alleges that he filed petitions for writ of habeas corpus in state courts raising this
 5 issue before filing this action.

6 Respondent argues that Petitioner did not exhaust his federal claim in the California Supreme
 7 Court.

DISCUSSION

9 Prisoners in state custody who wish to challenge in federal habeas proceedings either the fact
 10 or length of their confinement are first required to exhaust state judicial remedies by presenting the
 11 highest state court available with a fair opportunity to rule on the merits of each and every claim
 12 they seek to raise in federal court. See 28 U.S.C. § 2254(b),(c); Rose v. Lundy, 455 U.S. 509, 515-
 13 16 (1982). If available state remedies have not been exhausted as to all claims, the district court
 14 must dismiss the petition. Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988). A
 15 dismissal solely for failure to exhaust is not a bar to returning to federal court after exhausting
 16 available state remedies. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

17 In support of Respondent's allegations that Petitioner failed to exhaust his state judicial
 18 remedies, Respondent first argues that Petitioner wrote "N/A" in response to the question addressing
 19 the additional relief sought in the state courts. (Mot. to Dismiss at 3 [citing Pet. at 4-5].)
 20 Respondent has also attached an exhibit showing that the California Supreme Court's official
 21 website generated a "printout of California Supreme Court cases filed by a party named 'Groce'
 22 confirm[ing] that Groce did not file a related petition in that court." (Resp't Ex. 3.)

23 The Court finds that the record shows Petitioner failed to exhaust his available state judicial
 24 remedies before seeking federal habeas relief. Petitioner only sought relief from the Alameda
 25 County Superior Court before filing his petition in federal court. Because Petitioner did not present
 26 his claims to the California Court of Appeal and the California Supreme Court for review (either in
 27 direct review or in a state petition for a writ of habeas corpus), the Court finds that his federal
 28 petition is unexhausted.

Case 4:06-cv-03417-SBA Document 13 Filed 07/23/07 Page 3 of 4

1 Accordingly, Respondent's motion to dismiss is GRANTED, and the petition is DISMISSED
2 as unexhausted. This dismissal is without prejudice to Petitioner returning to state court to exhaust
3 his state judicial remedies and then filing a new federal habeas corpus petition. Should he do so, he
4 is advised to file his new federal habeas corpus petition as soon as possible after his state court
5 proceedings have concluded. The Court makes no ruling at this time on the issue of the timeliness of
6 any future federal petition.

CONCLUSION

8 For the foregoing reasons, Respondent's motion to dismiss (docket no. 8) is GRANTED, and
9 the petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE as unexhausted.
10 The Clerk of the Court terminate as moot all pending motions, including Petitioner's "Motion for
11 Review of Decision and Court-Order Release" (docket no. 9). The Clerk shall enter judgment and
12 close the file.

13 This Order terminates Docket nos. 8 and 9.

14 IT IS SO ORDERED.

DATED: 7/23/07

Sandra B Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

Case 4:06-cv-03417-SBA Document 13 Filed 07/23/07 Page 4 of 4

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PIERCE LANDRUM GROCE,

Case Number: CV06-03417 SBA

Plaintiff,

V.

CHARLES C PLUMMER et al,

1. The following table summarizes the results of the study. The first column lists the variables, the second column lists the descriptive statistics, and the third column lists the regression coefficients.

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 23, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Pierce Landrum Groce P05958
CA Substance Abuse Treatment Facility
Corcoran State Prison
SPG GYM 215M
Corcoran, CA 93212

Dated: July 23, 2007
Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

Pierce Groce #05958
C.S.A.T.F./Gad-294 low
P.O. Box 5248
ConCoran, California
93212

Legal Mail



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for the Northern District of California
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